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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 JUANA SIERRA,

4 Plaintiff,

5 v.

07 CV 6769

6 THE CITY OF NEW YORK,

7 Defendant.

8 -----x
9 New York, N.Y.
January 14, 2008
4:20 p.m.

10 Before:

11 HON. JED S. RAKOFF,

12 District Judge

13 APPEARANCES

14 URBAN JUSTICE CENTER
15 Attorneys for Plaintiff
16 AMI T. SANGHI
LESLIE T. ANNEXSTEIN

17 WEST SIDE SRO LAW PROJECT
18 Attorney for Plaintiff
MARTI WEITHMAN

19 MICHAEL A. CARDOZO, Corporation Counsel
20 for the City of New York
Attorney for Defendant
21 JERALD HOROWITZ

22 Also present:

23 YARROW WILLMAN-COLE

24 Spanish Interpreter
25

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1 (Case called)

2 (In open court)

3 THE DEPUTY CLERK: January 14, 2008, Juana Sierra v.
4 City of New York. Counsel, please state your appearances for
5 the record.

6 MS. SANGHVI: Ami Sanghi for Urban Justice Center for
7 plaintiff Sierra.

8 MS. ANNEXSTEIN: Leslie Annexstein, Urban Justice
9 Center, for plaintiff Sierra.

10 MS. WEITHMAN: Martha Weithman, West Side SRO Project,
11 for plaintiff Sierra.

12 THE COURT: Is this Ms. Sierra?

13 MS. WEITHMAN: Yes, your Honor.

14 THE COURT: Do we have a translator for her?

15 MS. WEITHMAN: Yes, we do.

16 MR. HOROWITZ: Jared Horowitz, Corporation Counsel for
17 the City of New York for the defendant. I also have with me
18 deputy agency counsel Carol Steinberg sitting with me and the
19 witness, Moon Wha Lee, is sitting behind me.

20 THE COURT: Okay, very good.

21 All right, just for the purpose of the record, when
22 this cases was first brought, Ms. Sierra, the plaintiff, was
23 then living in a so-called SRO unit with her child, and was
24 facing eviction, and the lawsuit, which was brought both
25 against her landlord and against the City of New York and

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1 various agencies in the City of New York, challenged the New
2 York regulation, New York City Housing Maintenance Code Section
3 27-2076B, which prohibits children from living in single room
4 occupancy units on the ground that it constitutes
5 discrimination on grounds of familial status in violation of
6 the federal Fair Housing Act.

7 It early on became obvious to the Court that a
8 substantial issue needed to be briefed, namely, whether there
9 was a problem under the anti-injunction provision of federal
10 law, because part of what was being asked for was in effect a
11 stay of the eviction proceedings, and I determined that the
12 anti-injunction act did prohibit the actions as far as the
13 landlord was concerned, but not so far as the City was
14 concerned.

15 Meantime, the plaintiff entered into a settlement with
16 the landlord by which she vacated the premises in return for
17 \$19,000, and thus the case was ultimately dismissed on consent
18 of all parties, including the City, with respect to the
19 landlord.

20 Since the plaintiff is no longer facing eviction, the
21 City then moved to dismiss the lawsuit as to it on grounds of
22 lack of standing in the sense that there was no actual
23 controversy sufficient to meet Article 3 standards, and that is
24 the motion that we will hear today.

25 In connection with that motion, in addition to the

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1 legal briefs from both sides, I received an affidavit from
2 Ms. Sierra and an affidavit from Dr. Lee, and I determined that
3 I did not need to have an evidentiary hearing, but that I might
4 have to address for my own clarification some modest questions
5 to them, and I think we ought to deal with that first so that
6 the argument then can be made by counsel in light of what
7 emerges from the very brief questioning that I have for the two
8 witnesses, and I appreciate their being here today.

9 Maybe we ought to start with Dr. Lee, because
10 Ms. Sierra may want to remain here in any event, but Dr. Lee,
11 although he's more than welcome to remain, may also want to go
12 home. So, Dr. Lee, why don't you come on up?

13 MOON WHA LEE,

14 called as a witness by the Court,

15 having been duly sworn, testified as follows:

16 THE COURT: Please be seated.

17 DIRECT EXAMINATION

18 BY THE COURT:

19 Q. So I appreciate the benefit of your affidavit, but I had a
20 couple of questions. For the record, the witness' full name is
21 Moon Wha Lee. He is Assistant Commissioner for housing policy
22 analysis and statistical research of the New York City
23 Department of Housing Preservation and Development, a position
24 he has held since 1992, and he received a PhD in urban planning
25 from Columbia University in 1983.

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Lee - direct

1 Now, in paragraph 5 -- do you have a copy of your
2 affidavit?

3 A. No, I don't have it, sir.

4 THE COURT: Can counsel please hand a copy to the
5 witness?

6 Q. Did you draft this, by the way, or did counsel draft it for
7 you?

8 A. Mostly I drafted myself, sir.

9 Q. All right. So on paragraph 5, you say, quote, "The median
10 rent for all occupied and vacant rooming units as a whole in
11 2005 was \$644." Do you see that?

12 A. Yes, sir.

13 Q. And then you say later in that paragraph, that in her
14 affidavit, quote, "Plaintiff stated the monthly rental payment
15 of \$522.15 was affordable to her." Do you see that?

16 A. Yes, sir.

17 Q. And you say, quote, "Based upon this statement, she could
18 not afford to live in a rooming unit today, even if such units
19 were available," close quote. Do you see that?

20 A. Your Honor, yes.

21 Q. Now, what I don't understand is, a median rent means that
22 there's a range. So one could not conclude that she couldn't
23 afford an SRO unit unless one knew the range, true?

24 A. Yes, sir.

25 Q. Do you know the range?

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Lee - direct

1 A. I don't have numbers now.

2 Q. Okay. And the other question I had is -- two more
3 questions, really.

4 The difference between an SRO unit and a non-SRO unit
5 is that the SRO unit doesn't have kitchen and bathroom
6 facilities, true?

7 A. Yes, sir.

8 Q. So if everything else was equal, wouldn't you expect the
9 rent of the SRO unit to be lower?

10 A. I don't have rent information vacant available rooming
11 units, because such numbers are so small, but not necessarily
12 big rent for vacant available rooming units, it's the lower,
13 because usually asking rent for vacant unit is much higher than
14 contract rent for occupied units, sir.

15 Q. Why is that?

16 A. Because asking rent is rent information provided by either
17 owner or managing agent or supers and so on, and if unit is
18 vacant, owners usually expect higher rent than occupied unit.

19 Q. Why? In other words, I hear what you're saying and it's
20 important, but I don't understand why that would be so. Why
21 would one -- obviously, this is ultimately an issue of supply
22 and demand, though not exclusively.

23 A. Asking rent is what owners, managing agents and supers once
24 have it, but on the other hand, contract rent is rent specified
25 in lease contract. So usually asking rent, asked by owner,

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Lee - direct

1 managing agent, super is higher. Ultimately, contract rent
2 usually is lower than asking rent, because after negotiation
3 they can have contract.

4 Q. But I'm not sure you're focusing on my question. I
5 understand the asking is higher than the ultimate rent, but
6 what I'm saying is, if you had two apartments that were
7 essentially identical in terms of location, amount of space,
8 everything except that one included a kitchen and bathroom and
9 the other did not, would not you expect that the price of the
10 SRO unit would be lower, the rent price?

11 A. It may be conceivable, but rent for SROs or room units not
12 necessarily lower than regular apartment. Therefore, also
13 start off also for short-term occupancy, sometimes not monthly
14 rent but weekly rent added up by how many weeks, months,
15 they're staying. So not necessarily they are lower. Sometimes
16 they could be higher.

17 For example, if you have residential apartment and the
18 long-term residential hotel, they're not necessarily lower, but
19 sometimes they could be higher than rent for regular apartment.
20 I don't have data in my hand.

21 THE COURT: Okay. All right. Those are the questions
22 I had. Thank you so much. You may step down.

23 (Witness excused)

24 THE COURT: Now, let's get Ms. Sierra on the stand
25 with the translator.

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Lee - direct

1 Let me first ask the interpreter to identify herself
2 for the record.

3 THE INTERPRETER: My name is Yarrow Willman-Cole.

4 THE COURT: Are you a Court-certified interpreter?

5 THE INTERPRETER: No.

6 THE COURT: What's your training?

7 THE INTERPRETER: I'm actually a tenant organizer, but
8 I'm fluent in Spanish.

9 THE COURT: So you're associated with the plaintiff's
10 counsel here?

11 THE INTERPRETER: I don't work on the case, but I work
12 in the same office.

13 THE COURT: But you are, if you will, ideologically
14 aligned with them, yes?

15 THE INTERPRETER: I work in the same office.

16 THE COURT: In the same office, on similar matters,
17 from a tenant's point of view?

18 THE INTERPRETER: Sure.

19 THE COURT: Tell me your background. How did you
20 become fluent in Spanish?

21 THE INTERPRETER: I actually studied Spanish, it was
22 my major in college.

23 THE COURT: Where did you go to college?

24 THE INTERPRETER: I went to Ohio State.

25 THE COURT: Okay. You didn't study football?

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Lee - direct

1 THE INTERPRETER: I also lived abroad for a number of
2 years.

3 THE COURT: Where?

4 THE INTERPRETER: Spain, Central America, Costa Rica
5 and Honduras.

6 THE COURT: For how long?

7 THE INTERPRETER: For two-and-a-half years.

8 THE COURT: Are you confident you can fairly and
9 accurately interpret these proceedings?

10 THE INTERPRETER: Yes.

11 THE COURT: Were you the interpreter on the affidavit?

12 THE INTERPRETER: Yes.

13 THE COURT: Please raise your right hand. Do you
14 swear to accurately and completely interpret from English into
15 Spanish and Spanish into English the questions put to the
16 witness and the answers given?

17 THE INTERPRETER: Yes, I do.

18 THE COURT: All right. Now ask the witness, if you
19 will, to raise her right hand.

20 JUANA SIERRA,

21 called as a witness by the Court,

22 having been duly sworn, testified as follows:

23 THE COURT: Okay, please be seated.

24 DIRECT EXAMINATION

25 BY THE COURT:

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Sierra - direct

1 Q. So, Ms. Sierra, thank you very much for your affidavit.
2 What is the present status as of today of your search for an
3 apartment?

4 THE INTERPRETER: She said she would like to live in
5 Manhattan.

6 Q. Have you found an apartment?

7 MR. HOROWITZ: I'm sorry, I can't hear the
8 interpreter.

9 A. Not yet, no.

10 THE COURT: You'll have to speak louder so counsel can
11 hear you.

12 THE INTERPRETER: Sure.

13 THE COURT: The answer is, "not yet."

14 Q. Do I understand that you are able to spend something like
15 \$522 or so on rent?

16 A. Yes, but I don't, I can't find any place with that amount
17 that I was paying before.

18 Q. How did you calculate that amount?

19 THE INTERPRETER: She doesn't understand the question?

20 Q. Who drafted your affidavit?

21 THE INTERPRETER: Her lawyer.

22 Q. Which lawyer?

23 THE INTERPRETER: Marti, she says.

24 THE COURT: Meaning?

25 MS. WEITHMAN: That's me, your Honor.

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Sierra - direct

1 Q. Where are you living now?

2 THE INTERPRETER: She lives at 135th West 238th Street
3 in the Bronx.

4 Q. And is that a residence that you rent or is it a residence
5 that belongs to a friend or what?

6 THE INTERPRETER: She's living with her son.

7 Q. And so that's his apartment?

8 A. Yes.

9 Q. And, now, you have a young child, is that it?

10 A. Yes.

11 Q. One or several?

12 THE INTERPRETER: She has two younger children; one
13 that's 15 and one that's 6.

14 Q. Now this, the person whose apartment you're living in is an
15 older son?

16 A. Yes.

17 Q. How old is he?

18 A. He's 23.

19 Q. What does he do for a living?

20 A. He works in a kitchen.

21 Q. What kind of apartment does he have?

22 A. An apartment of two bedrooms.

23 Q. Now, are you presently employed?

24 A. Not right now.

25 Q. So you say in your affidavit, quote, "I have a low income

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Sierra - direct

1 and my rent for two rooms was \$522.15, which is affordable for
2 me." Is that still affordable for you?

3 A. Yes.

4 Q. What is the most you think you could pay for an apartment?

5 A. The most probably 600.

6 Q. How are you presently conducting your search for a new
7 apartment?

8 THE INTERPRETER: She doesn't understand the question,
9 your Honor?

10 Q. I think you said you were looking for a new apartment?

11 THE INTERPRETER: She's saying yes, she is looking,
12 because the Bronx is too far since her children are going to
13 school in Manhattan.

14 Q. So my question is, how are you going about looking for an
15 apartment?

16 THE INTERPRETER: She's saying that she was asking
17 around, but then she said that she was working before, and that
18 at such a low income that it makes her very difficult for her
19 to find anything.

20 Q. Well, I understand that, but what I'm unclear about is when
21 you say you're asking around, are you still continuing to look
22 for an apartment now?

23 THE INTERPRETER: She said yes to your question.

24 Q. And if a single room occupancy unit was available for \$600
25 or less, would that be an apartment you would consider moving

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Sierra - direct

1 into?

2 A. Yes.

3 THE COURT: All right. Thank you very much, you may
4 step down.

5 (Witness excused)

6 THE COURT: All right, I'm ready to hear oral argument
7 from counsel, beginning with counsel from the City.

8 MR. HOROWITZ: Good afternoon, your Honor. Your
9 Honor, because of the plaintiff's vacatur of the rooming unit,
10 there's no longer a case or controversy before the Court.

11 THE COURT: Why not? She wants to move with her two
12 young children into an apartment. She would be perfectly happy
13 to move into an SRO for \$600 or less, but she is effectively
14 prohibited by law from doing so because if she does so, she
15 will be in violation of New York City, of the very New York
16 City ordinance that she is challenging. What more does she
17 need?

18 MR. HOROWITZ: But, your Honor, previously before the
19 Court, the plaintiff had two rooming units for \$522. Now, just
20 to seek one rooming unit, which, by the way, can't house three
21 people, would cost, assuming, you know, the facts that she's
22 presenting, that she could even find a rooming unit for \$522,
23 it still would not be sufficient for the living requirements
24 for herself and her family.

25 THE COURT: That's not her testimony. I don't for

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1 these purposes make any credibility determinations. She says
2 she'd be happy to move into that. It's clear from what your
3 expert said that he doesn't have information as to the full
4 range of rents, he only knows the average rent. It's clear
5 that she'd be willing to go up to \$600, although she is low
6 income, she now has a little money, because she just got
7 \$19,000 from her beloved former landlord, and so the situation
8 she's presented with is that one segment of the otherwise
9 available housing stock is not available to her by virtue of
10 the regulation of the City.

11 MR. HOROWITZ: But, your Honor, the point I'm trying
12 to make is simply that while she has an interest in -- she's
13 expressed an interest, testified that she has an interest in
14 obtaining an SRO unit, the defendant's position is that it's
15 economically prohibitive because she requires two rooming
16 units, and she hasn't established that she can afford two
17 rooming units. A rooming unit can physically only house one or
18 possibly --

19 THE COURT: What was your understanding of the rent
20 she was paying at the previous place that she was living; \$520,
21 right?

22 MR. HOROWITZ: That's correct, for two rooming units.

23 THE COURT: So we know from that, that there are
24 rooming units available at that price, right?

25 MR. HOROWITZ: No, we don't, your Honor.

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1 THE COURT: Oh? This was a unique landlord who was
2 giving a special bargain to anyone he could then induce to come
3 in in violation of the law that he would thereafter evict?

4 MR. HOROWITZ: Your Honor, I can't speculate as to how
5 she came about getting those two rooming units.

6 THE COURT: What's your basis for believing there was
7 no such unit available other than the one she actually was
8 living in?

9 MR. HOROWITZ: Your Honor, all defendants are saying,
10 based upon Moon Wha Lee's affidavit, Dr. Lee's affidavit is
11 that the median rent for one unit is \$644.

12 THE COURT: But the question I put to him, and I agree
13 that that was very helpful, but he was frank to tell me that he
14 doesn't know the range. The median is meaningless without the
15 range.

16 MR. HOROWITZ: Well, your Honor, we're not suggesting
17 that there aren't rents that are less than \$644.

18 THE COURT: Well, that's good, because the median by
19 definition means there must be.

20 MR. HOROWITZ: That's correct. What we are saying,
21 and this is the thrust of the defendant's argument, is
22 possibilities. There is a very slim possibility that -- and
23 Mr. Lee's conclusion was highly improbable -- that the
24 defendant -- I'm sorry, that the plaintiff would be able to get
25 another rooming unit, for two reasons: One is affordability,

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1 and second, is the available units. There aren't many units.
2 Dr. Lee's testimony or his affidavit suggests that the number
3 of rooming units is so small, I believe he mentioned that in
4 his testimony before your Honor today, it's so small that you
5 can't even really measure it properly because of it, and, your
6 Honor, I'd like to --

7 THE COURT: Well, I'm not sure what -- I don't believe
8 he ever gave me a number, either in this affidavit or in his
9 testimony. What he says, and you're referring to paragraph 4
10 of his affidavit, is that according to the 2005 New York City
11 housing and vacancy survey, which is the latest survey
12 containing data on occupied and vacant rental housing in New
13 York City, the number of vacant available rooming units, which
14 is what he's referring to or what we've been calling SRO
15 rooming units, quote, "is too small to be used in a
16 statistically reliable manner, considering sampling and
17 non-sampling errors," and I inferred from that that, therefore,
18 any generalizations about this are highly speculative on your
19 part.

20 MR. HOROWITZ: Well, no, your Honor. The statistics
21 relating to the number of apartments as opposed to rooming
22 units, that is can be measured, and those statistics are
23 provided in paragraphs 6 and 7 of -- and also 5, I guess. I'm
24 sorry, 6 and 7 for the vacant rental units.

25 THE COURT: I mean, this was why I put the question.

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1 In those two paragraphs he says that there were 7,318 vacant
2 available rental units of all types in the city with a monthly
3 asking rent less than \$600. The vast majority of these units
4 were regular apartments, not rooming units. So it follows from
5 that that there is some number of rooming units that are vacant
6 that have a monthly asking rent of less than \$600, correct?

7 MR. HOROWITZ: That's correct.

8 THE COURT: So, and she says those would be something
9 she'd like to consider.

10 MR. HOROWITZ: Your Honor, the point I'm trying to
11 bring out is probabilities of that happening are slim to none.
12 Your Honor, the --

13 THE COURT: So slim to none that she managed to find
14 in actuality two rooms for \$522. *Mirabile dictu*, as you would
15 say.

16 MR. HOROWITZ: Your Honor, if I may, the burden which
17 is on the plaintiffs to establish standing also requires that
18 the controversy be of immediacy and reality. Beyond even
19 finding a rooming unit which you and I have been arguing about,
20 there's also the inability that the defendant has to issue a
21 violation pursuant to --

22 THE COURT: No, I don't agree with that at all. Your
23 point about the number of units is not without some force and I
24 want to hear from your adversary on that, although I'm
25 skeptical of the argument. The argument about violation seems

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1 to me to be, forgive my putting it this way, sufficiently
2 lacking in merit as not to require a response.

3 She is harmed by the fact that assuming that there are
4 such units realistically available, assuming, therefore, the
5 contrary of your first argument, that she can't possibly
6 consider, realistically consider moving in, because it would be
7 a violation of law. You seem to be making the argument in your
8 papers that she should first break the law, then the landlord
9 should break the law, and only after the City finally enforces
10 the law does she have standing to challenge the law. I know of
11 no case that supports that proposition.

12 MR. HOROWITZ: But, your Honor --

13 THE COURT: That she has to be a law-breaker first and
14 the landlord has to be a law-breaker second, before she could
15 have standing to challenge this ordinance. That would be an
16 extraordinary view of Article 3 standing.

17 MR. HOROWITZ: Well, your Honor, in her affidavit she
18 says that the basis upon which she's challenging the statute is
19 she doesn't want to risk eviction.

20 THE COURT: Yes.

21 MR. HOROWITZ: Again, and if possibly when --

22 THE COURT: She doesn't want to put herself in the
23 position of breaking the law. And that's why she's bringing
24 this challenge.

25 MR. HOROWITZ: But, your Honor --

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1 THE COURT: Are you saying, I mean, for example,
2 supposing, let us assume contrary to the fact, supposing
3 99 percent of all housing units in her price range available to
4 her were SRO's, and she very much would have been happy to live
5 in one of those, in my hypothetical, innumerable available
6 units, but she could not go into those units because she knew
7 the law said that she was, if she did so, she'd be violating
8 the law. And you're saying in that situation, before she would
9 have standing to bring an action under the Fair Housing Act,
10 she would have to say, notwithstanding that, I'm prepared to be
11 a law-breaker, I'll bet I could find a landlord who will also
12 break the law with me, and it will only be when the City issues
13 a violation that I'll be able to challenge this law. That
14 cannot be the law standing, counsel.

15 MR. HOROWITZ: Well, your Honor, the statute, the way
16 the statute is drafted, the statute applies to the landlord,
17 not to the tenant. The statute directs that in the event
18 that -- well, first of all, gives the City the discretion to
19 impose a violation for the statute --

20 THE COURT: So you're saying you can't challenge a law
21 that violates, a city ordinance that violates federal law
22 because the City sometimes will choose to enforce its laws and
23 sometimes won't? That can't be the law, either.

24 MR. HOROWITZ: Your Honor, all we're talking about is
25 contingencies, and what we're saying is that there are

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1 contingencies to the enforcement of this statute against the
2 plaintiff which haven't yet happened yet, and that's -- there's
3 not a sufficiently concrete controversy before the Court,
4 because, number one, the plaintiff isn't in a rooming unit, and
5 we don't even know whether she can get a rooming unit.

6 THE COURT: I see. I mean, this is in effect a facial
7 challenge and basically what she's saying is you have through
8 the ordinance excluded her from some segment of the available
9 housing units that she otherwise would like to consider. In
10 terms of the Fair Housing Act, you are in effect making
11 unavailable to her a dwelling because of familial status.
12 That's her argument.

13 Now, I agree with you that if the housing supply
14 consisted of 5 million non-SRO's and one SRO, something that is
15 that remote might not supply sufficient standing to bring a
16 facial challenge.

17 MR. HOROWITZ: Well, that's what we have here, your
18 Honor.

19 THE COURT: That's your first argument. We're past
20 your first argument, we're on to your second argument. The
21 first argument I'm going to hear from your adversary in a
22 minute. But your fallback argument is, even if that's not so,
23 it's not until she actually gets violated that she has
24 standing. I just don't see that at all.

25 MR. HOROWITZ: Well, your Honor, the cases that talk

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1 about it, which are cited in our reply brief in particular,
2 have -- do present cases where, for instance, in the Golden v.
3 Zwickler case, which was a facial challenge, the Court
4 ultimately rejected the challenge because of, that the
5 possibility that this -- the plaintiff there, who was Zwickler,
6 who was a Congressman who then took a position as a Supreme
7 Court judge wasn't in a position, that it was most unlikely
8 that he would again be subject to the statute.

9 The question is what is the likelihood that this
10 plaintiff is going to be subject to the statute again, and what
11 we're saying is that the burden is on the plaintiff to
12 establish that, and the only statement we have is in her
13 affidavit saying that she fears that she won't be able to get
14 into -- she wants an SRO, she'd like to be there, but we have
15 no information provided of the likelihood that she will be able
16 to get into an SRO unit.

17 THE COURT: All right, let me hear from your
18 adversary. We'll come back to you. Thank you very much.

19 MS. SANGHVI: Thank you, your Honor.

20 THE COURT: So don't waste any time on the second
21 argument, but the first argument seems to me to be at least one
22 that I need to consider. If, to take the opposite of the hypo
23 I gave to your adversary, if there was only one SRO unit in her
24 price range in New York, which was the one that she's now
25 agreed in her settlement with her landlord not to occupy, she

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1 wouldn't have standing, would she?

2 MS. SANGHVI: I believe in that situation if there was
3 simply one SRO in all of Manhattan, then perhaps that harm
4 would be remote. But in our understanding, there are many SRO
5 units that are available. We're co-counsel with the West Side
6 SRO Law Project, they have expertise in this area.

7 THE COURT: I didn't see in your papers where you
8 presented anything along those lines. Maybe I missed it.

9 MS. SANGHVI: We have not presented you any expert
10 information in regards to the availability or the number of SRO
11 units.

12 THE COURT: So your adversary says he doesn't know how
13 many units it is, but it's small, the vast majority, I think is
14 his term, of the vacant units are not SRO in her price range,
15 so that this is just a remote contingency which would make for
16 a fun case involving able counsel, but has little or nothing to
17 do with actual standing.

18 MS. SANGHVI: Absolutely, your Honor. In the
19 affidavit that the defendants put forward, outside of there not
20 being much statistical reliability that they have offered us to
21 calculate these --

22 THE COURT: Yes, but you didn't -- you just told me
23 two seconds ago all the unquestioned expertise that your side
24 has. I didn't see anything from your side on this issue.

25 MS. SANGHVI: Absolutely. Well, first, I believe with

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1 some further factual development we would be able to provide
2 your Honor and this Court with some additional expertise around
3 the fact that there are available SRO units throughout the
4 city; that she has not had yet the opportunity to locate one,
5 but even if she were to locate one, the harm remains absolute
6 today that she cannot in fact reside in one, and furthermore,
7 as has been stated in --

8 THE COURT: I don't understand that last point,
9 because you agreed with me that if there was one and only one
10 unit, and that was the one that she had vacated, that she
11 wouldn't have standing. Let's say I'll double the number.
12 Supposing there were two units; the one she vacated and one
13 other, completely unknown to her, not actually looked at by
14 her -- her search seems to have been very modest indeed -- and
15 she's not under, apparently, any terrible pressure because she
16 has an older son who's got a two-room apartment where she's at
17 least able to abide for the moment. So if there was one other
18 apartment out there that fits her needs, but she doesn't know
19 about it, she hasn't looked for it and she hasn't found it,
20 would she have standing?

21 MS. SANGHVI: Your Honor, first of all, even if there
22 were one or there were two, I agree that the harm would be a
23 bit more remote. I don't know if I would agree that there
24 would be no standing.

25 THE COURT: That's what I'm asking. I'm delighted to

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1 know that you're not sure whether you would agree or not, so
2 which is it?

3 MS. SANGHVI: I believe she would continue to have
4 standing because the harm remains imminent and actual.

5 THE COURT: What's the imminent harm for not being
6 able to get into an apartment you don't even know about?

7 MS. SANGHVI: The fact that the law bars her from any
8 available SRO unit, whether it's one, two or --

9 THE COURT: I mean the law, for all I know, may bar
10 all of us from something we don't know about at the moment, but
11 since we don't know about it, how can we bring an action? I
12 mean, she has not identified any SRO fitting her needs that she
13 would like to abide in. She has not identified, short of that,
14 any number to suggest that there are many such units. Yes, the
15 City's presentation is very, very weak, but at least it's
16 something. As against that, you have given, to use a legal
17 term of art, zilch. So how can I say that this is not a remote
18 contingency at best under the circumstances?

19 MS. SANGHVI: Based even just solely on what the City
20 has provided us and this Court in terms of what available units
21 are there, the vast majority of these units are not rooming
22 units -- are, sorry, regular apartments and not rooming units.
23 That means that of the over 12,000 apartments the City claims
24 are available for affordable housing, the vast majority of them
25 are, yes, regular apartments, but that leaves, I don't know,

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1 20 percent of the 12,000 that could be rooming units, could be
2 30 percent, could be 10 percent. I'm not clear on what
3 percentage of the 12,000 apparent --

4 THE COURT: It seems to me, and I'll put it to you
5 this way so that your adversary can respond. We know two
6 things. We know that there are some number of these units. We
7 know that from the way the City has couched its own expert
8 affidavit, and we know that a unit of that kind is something
9 that this plaintiff would be perfectly happy to live in because
10 not only has she so said, but more importantly, she was living
11 in just such a unit. So the question is, is that sufficient to
12 warrant a facial challenge? I know you're going to say the
13 answer is yes. Let me hear from your adversary and I'll come
14 right back.

15 MR. HOROWITZ: Your Honor, the housing situation the
16 plaintiff had previously is somewhat unusual. She was living
17 in a rooming house, she had one occupied, I believe, one entire
18 floor of a rooming house. There aren't that many rooming
19 houses in the City of New York. The idea of finding one, let
20 alone two contiguous rooming units so that her entire family
21 can live together on one floor I find -- I think Dr. Lee could
22 testify further that those chances are very remote.

23 More importantly is the ability to afford two rooming
24 units, which I think it's undisputed that the plaintiff can't
25 afford, even assuming that it's the lower of the median rent

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1 that the defendants have put forward. Both of those reasons;
2 the number of available rooming units and the rent that would
3 be charged today, as opposed to when the plaintiff was looking
4 for a rooming unit, I think weigh in favor of that there is no
5 standing because the possibility of this plaintiff being in a
6 situation where she might be able to be in a rooming unit is
7 remote.

8 THE COURT: All right. Here's what I think is the
9 bottom line so far as today is concerned. I don't think I can
10 decide this motion on the present record. In fairness to
11 plaintiff, the affidavit from Dr. Lee came in at the end of the
12 briefing and, therefore, there was no opportunity to respond.
13 So I will give plaintiff's counsel an opportunity to put in one
14 or more affidavits of a factual or expert nature. I do not
15 want any more legal briefing. I mean that completely. If
16 anyone cites a case, I will not read your papers. I just want
17 facts.

18 I will then give defense counsel the opportunity to
19 put in a supplemental affidavit responding to whatever the
20 affidavits are, such as from Dr. Lee or anyone else, but again,
21 I don't want any further legal briefing, I just want facts. So
22 then I'll receive the motion after receiving those additional
23 submissions.

24 How long does counsel want to submit those additional
25 affidavits?

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1 MS. SANGHVI: At a minimum, your Honor, we would
2 appreciate two weeks.

3 THE COURT: Two weeks is fine. Minimum. Whenever
4 counsel asks for a minimum, I'm always happy to give them
5 exactly what they ask for. So, let's see, today is
6 January 14th, so that's January 28th, and how long does the
7 City want to respond?

8 MR. HOROWITZ: Your Honor, can I confer with the
9 witness to find out his schedule?

10 THE COURT: Sure. Although I should tell you the
11 choice is either two weeks or two weeks.

12 (Pause)

13 MR. HOROWITZ: Your Honor, the defense also is
14 requesting two weeks.

15 THE COURT: Good idea. But I'm actually going to give
16 you two weeks and one day, because two weeks would be
17 February 11, which is a holiday so you get -- I'm sorry, no,
18 it's not. February 12 is a holiday. You may not realize
19 February 12 is a holiday, but this courthouse is actually
20 closed by order of Chief Judge Kimba Wood and a good thing, I
21 applaud her desire to honor Abraham Lincoln on his real
22 birthday and not be merely glomming him together with President
23 Washington. So February 11 it is. I will then, I guarantee
24 you, I will have you at least a bottom line and hopefully a
25 full decision, but at least a bottom line by no later than

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1 February 22nd. This matter will in all other respects be
2 stayed until then and then depending on what I decide either it
3 will be dismissed or we'll pick up again with further
4 proceedings.

5 Thank you so much. This matter is adjourned.

6 (Adjourned)
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